

OPEN MEETING ITEM



0000014470

COMMISSIONERS
MARC SPITZER - Chairman
WILLIAM A. MUNDELL
JEFF HATCH-MILLER
MIKE GLEASON
KRISTIN K. MAYES

ORIGINAL



ARIZONA CORPORATION COMMISSION
Arizona Corporation Commission
DOCKETED

22

DATE: November 30, 2004

NOV 30 2004

DOCKET NO: T-04253A-04-0275

DOCKETED BY	<i>CR</i>
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TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Marc E. Stern. The recommendation has been filed in the form of an Order on:

TELE CIRCUIT NETWORK CORPORATION
(CC&N/RESELLER)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00 p.m.** on or before:

DECEMBER 9, 2004

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Working Session and Open Meeting to be held on:

December 14 and 15, 2004

For more information, you may contact Docket Control at (602)542-3477 or the Hearing Division at (602)542-4250. For information about the Open Meeting, contact the Executive Secretary's Office at (602) 542-3931.

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1
2 **BEFORE THE ARIZONA CORPORATION COMMISSION**

3 COMMISSIONERS

4 MARC SPITZER, Chairman
5 WILLIAM A. MUNDELL
6 JEFF HATCH-MILLER
7 MIKE GLEASON
8 KRISTIN K. MAYES

9 IN THE MATTER OF THE APPLICATION OF
10 TELE CIRCUIT NETWORK CORPORATION FOR
11 A CERTIFICATE OF CONVENIENCE AND
12 NECESSITY TO PROVIDE COMPETITIVE
13 RESOLD INTEREXCHANGE
14 TELECOMMUNICATIONS SERVICES, EXCEPT
15 LOCAL EXCHANGE SERVICES.

DOCKET NO. T-04253A-04-0275

DECISION NO. _____

16 ORDER

17 Open Meeting
18 December 14 and 15, 2004
19 Phoenix, Arizona

20 **BY THE COMMISSION:**

21 Having considered the entire record herein and being fully advised in the premises, the
22 Arizona Corporation Commission ("Commission") finds, concludes, and orders that:

23 FINDINGS OF FACT

24 1. On April 12, 2004, Tele Circuit Network Corporation ("Applicant" or "TCN") filed
25 with the Commission an application for a Certificate of Convenience and Necessity ("Certificate") to
26 provide competitive resold interexchange telecommunications services, except local exchange
27 services, within the State of Arizona.

28 2. Applicant is a switchless reseller that purchases telecommunications services from a
variety of carriers for resale to its customers.

3. In Decision No. 58926 (December 22, 1994), the Commission found that resold
telecommunications providers ("resellers") are public service corporations subject to the jurisdiction
of the Commission.

4. TCN has authority to transact business in the State of Arizona.

5. On May 14, 2004, Applicant filed an Affidavit of Publication indicating compliance

1 with the Commission's notice requirements.

2 6. On November 12, 2004, the Commission's Utilities Division Staff ("Staff") filed a
3 Staff Report which includes Staff's fair value rate base determination in this matter and recommends
4 approval of the application subject to certain conditions.

5 7. In the Staff Report, Staff stated that TCN provided unaudited financial statements for
6 the 12 months ending December 31, 2003, which list assets in excess of \$73,000, equity in excess of
7 \$69,000 and a net loss of \$25,052.

8 8. In its Staff Report, Staff stated that based on information obtained from the Applicant,
9 it has determined that TCN's fair value rate base ("FVRB") is zero and is not useful in a fair value
10 analysis, and is not useful in setting rates. Staff further stated that in general, rates for competitive
11 services are not set according to rate of return regulation, but are heavily influenced by the market.
12 Staff recommended that the Commission not set rates for TCN based on the fair value of its rate base.

13 9. Staff believes that TCN has no market power and that the reasonableness of its rates
14 will be evaluated in a market with numerous competitors. In light of the competitive market in which
15 the Applicant will be providing its services, Staff believes that the rates in Applicant's proposed
16 tariffs for its competitive services will be just and reasonable, and recommends that the Commission
17 approve them.

18 10. Staff recommended approval of TCN's application subject to the following:

19 (a) The Applicant should be ordered to comply with all Commission rules, orders,
20 and other requirements relevant to the provision of intrastate telecommunications
21 service;

22 (b) The Applicant should be ordered to maintain its accounts and records as
23 required by the Commission;

24 (c) The Applicant should be ordered to file with the Commission all financial and
25 other reports that the Commission may require, and in a form and at such times as the
26 Commission may designate;

27 (d) The Applicant should be ordered to maintain on file with the Commission all
28 current tariffs and rates, and any service standards that the Commission may require;

(e) The Applicant should be ordered to comply with the Commission's rules and
modify its tariffs to conform to these rules if it is determined that there is a conflict

1 between the Applicant's tariffs and the Commission's rules;

2 (f) The Applicant should be ordered to cooperate with Commission investigations
3 including, but not limited to customer complaints;

4 (g) The Applicant should be ordered to participate in and contribute to the Arizona
5 Universal Service Fund, as required by the Commission;

6 (h) The Applicant should be ordered to notify the Commission immediately upon
7 changes to the Applicant's name, address or telephone number;

8 (i) If at some future date, the Applicant wants to collect from its resold
9 interexchange customers an advance, deposit and/or prepayment, Staff recommends
10 that the Applicant be required to file an application with the Commission for
11 Commission approval. Such application must reference the Decision in this docket and
12 must explain the Applicant's plans for procuring a performance bond;

13 (j) The Applicant's interexchange service offerings should be classified as
14 competitive pursuant to A.A.C. R14-2-1108;

15 (k) The Applicant's maximum rates should be the maximum rates proposed by the
16 Applicant in its proposed tariffs. The minimum rates for the Applicant's competitive
17 services should be the Applicant's total service long run incremental costs of
18 providing those services as set forth in A.A.C. R14-2-1109;

19 (l) In the event that the Applicant states only one rate in its proposed tariff for a
20 competitive service, the rate stated should be the effective (actual) price to be charged
21 for the service as well as the service's maximum rate; and

22 (m) In the event the Applicant requests to discontinue and/or abandon its service
23 area it must provide notice to both the Commission and its customers. Such notice(s)
24 shall be in accordance with A.A.C. R14-2-1107.¹

25 11. Staff further recommended that TCN's Certificate should be conditioned upon the
26 Applicant filing conforming tariffs in accordance with this Decision within 365 days from the date of
27 an Order in this matter, or 30 days prior to providing service, whichever comes first.

28 12. Staff recommended that if the Applicant fails to meet the timeframes outlined in
Findings of Fact No. 11, that TCN's Certificate should become null and void without further Order of
the Commission, and that no time extensions for compliance should be granted.

13. TCN will not collect advances, prepayments or deposits from its customers.

¹ Pursuant to A.A.C. R14-2-1107, the Applicant is required to comply and obtain Commission authorization of compliance with all of the requirements, including but not limited to the notice requirements, prior to discontinuance of service and/or abandonment of its service area.

14. The rates proposed by this filing are for competitive services.

15. Staff's recommendations as set forth herein are reasonable.

16. TCN's fair value rate base is zero.

CONCLUSIONS OF LAW

1. Applicant is a public service corporation within the meaning of Article XV of the Arizona Constitution and A.R.S. §§ 40-281 and 40-282.

2. The Commission has jurisdiction over Applicant and the subject matter of the application.

3. Notice of the application was given in accordance with the law.

4. Applicant's provision of resold interexchange telecommunications services is in the public interest.

5. Applicant is a fit and proper entity to receive a Certificate as conditioned herein for providing competitive resold interexchange telecommunications services in Arizona.

6. Staff's recommendations in Findings of Fact No. 8, 9, 10, 11, and 12 should be adopted.

7. TCN's fair value rate base is not useful in determining just and reasonable rates for the competitive services it proposes to provide to Arizona customers.

8. TCN's rates, as they appear in its proposed tariffs, are just and reasonable and should be approved.

ORDER

IT IS THEREFORE ORDERED that the application of Tele Circuit Network Corporation for a Certificate of Convenience and Necessity for authority to provide competitive resold interexchange telecommunications services, except local exchange services, is hereby granted, conditioned upon its compliance with the conditions recommended by Staff as set forth in Findings of Fact No. 11 above.

IT IS FURTHER ORDERED that Staff's recommendations set forth in Findings of Fact Nos. 8, 9, 10, 11, and 12 above are hereby adopted.

IT IS FURTHER ORDERED that Tele Circuit Network Corporation shall comply with the adopted Staff recommendations as set forth in Findings of Fact Nos. 10 and 11 above.

1 IT IS FURTHER ORDERED that if Tele Circuit Network Corporation fails to meet the
 2 timeframes outlined in Findings of Fact. No. 11 above that the Certificate conditionally granted
 3 herein shall become null and void without further Order of the Commission.

4 IT IS FURTHER ORDERED that Tele Circuit Network Corporation shall not require its
 5 Arizona customers to pay advances, prepayments or deposits for any of its products or services.

6 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

7 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.
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 9

10 CHAIRMAN

COMMISSIONER

COMMISSIONER

11
 12 COMMISSIONER

COMMISSIONER

13 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive
 14 Secretary of the Arizona Corporation Commission, have
 15 hereunto set my hand and caused the official seal of the
 16 Commission to be affixed at the Capitol, in the City of Phoenix,
 17 this ____ day of _____, 2004.

18 BRIAN C. McNEIL
 EXECUTIVE SECRETARY

19 DISSENT _____
 20

21 DISSENT _____
 22

MES:mlj
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1 SERVICE LIST FOR:

TELE CIRCUIT NETWORK CORPORATION

2
3 DOCKET NO.:

T-04253A-04-0275

4 Asher Syed

5 Tele Circuit Network Corp.

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6 Alpharetta, GA 30022

7 Christopher Kempley, Chief Counsel

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9 Phoenix, Arizona 85007

10 Ernest G. Johnson, Director

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